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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

Audit Referral: 00-07
Audit Referral Date: May 16, 2000
Date Activated: August 7, 2000

Expiration of
Statute of Limitations: January 1, 2002¹
Staff Member: Eric S. Brown

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

Lincoln Diaz-Balart for Congress Committee and
Jose A. Riesco, as treasurer²
Paul DiMare
Jorge Monteagudo
Anesthesia Group of Miami, Inc.
AquaMar 176, Inc.
B.C.C. Enterprises, Inc.
Calleja's Shutters, Inc.
Caribbean Americas Beauty Expo., Inc.
Coastal Insurance Group, Inc.
F&C Development Corp.
Florida National College, Inc.
Florida Property and Casualty Assoc., Inc.
Global Marketing Enterprises
Gomez Barker Associates, Inc.
Investors Realty Services, Inc.
Lakeside Developers, Inc.
Miguel Lopez, Jr., Inc.
Ocean Beach 167, Inc.
OPAC Enterprises, Inc.
Patient Transport Services, Inc.

¹ The earliest apparent violations in this matter are related to the Committee's misstatement of its cash on hand as of January 1, 1997, its 1997 overstatement of receipts, and its 1997 understatement of disbursements. Therefore, the earliest date on which the limitations period would run with respect to an apparent violation in these matters is January 1, 2002. See 28 U.S.C. § 2462.

² On November 13, 2000, Lincoln Diaz-Balart for Congress Committee notified the Reports Analysis Division that Ayuban Tomas was replaced as treasurer.

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21-04-405-1028

R.B. Management Services, Inc.
Rose Flooring Corp.
The Continental Group, LTD
The Phyliss Apple Organization, Inc.
W/X of Dade County (WMX Technologies)
Water Brothers Corp.

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)
2 U.S.C. § 438(b)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 110.1(b)(5)
11 C.F.R. § 110.1(k)(3)

INTERNAL REPORTS CHECKED:

Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter was generated by an audit of the Lincoln Diaz-Balart for Congress Committee ("the Committee") and Jose A. Riesco, as treasurer, undertaken in accordance with 2 U.S.C. § 438(b). *See* Attachment 1. The audit covered the period from January 1, 1997 through December 31, 1998.³

³ The Committee failed to timely file the 2000 April Quarterly Report, 2000 July Quarterly Report, and 2000 12 Day Pre-Primary Report.

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II. FACTUAL AND LEGAL ANALYSIS

A. Excessive Contributions

The Audit Division found that the Committee accepted excessive contributions from 15 individuals which exceeded the contribution limitation by a total of \$20,700. Attachment 1 at 3. Upon further clarification from the Audit Division and this Office's review, it appears that the Committee accepted excessive contributions from 18 individuals totaling \$17,700.⁴ These contributions were not reattributed, redesignated, or refunded within the 60-day periods provided for by 11 C.F.R. §§ 110.1(b)(5)(ii)(B), 110.1(k)(3)(ii)(B), and 103.3(b)(3). The Committee's refunds total \$18,700 and were made outside of the 60-day period provided for by 11 C.F.R. § 103.3(b)(3).⁵ Therefore, based on the Audit Referral, this Office recommends that the

⁴ Audit staff clarified that the number of contributors making excessive contributions increased from 15 to 18 because previously, certain individuals with the same last name were treated as one contributor, although each gave amounts exceeding the limitation. The final tally of 18 is arrived at by this Office's conclusion that Dexter Lehtinen does not appear to have made an excessive contribution and by treating contributions from Jose/Joseph Milton as coming from two different individuals.

Dexter Lehtinen's contribution does not appear to be excessive because his \$2,000 contribution appears to have been properly designated \$1,000 for the primary election and \$1,000 for the general election. A signed and dated letter clearly indicates the elections with respect to which the contributions were made. Although the Audit Referral notes the one day discrepancy between the date of his letter and the date of the contribution check, the written designation is signed and dated by Mr. Lehtinen and apparently accompanied his contribution check. See 11 C.F.R. § 110.1(b)(4)(ii). Therefore, this individual's contribution does not appear to be excessive.

The Audit Division treats contributions made by Jose Milton and Joseph Milton as coming from the same individual based on the fact that six of the seven contribution checks bearing either of these names have the same address and similar signatures. Six of the contribution checks disclose the same address, but the drawer's name is "Jose Milton" on three of the checks and "Joseph Milton Investment Account" on the other three. For one contribution, no check was available, but the Committee itemized Joseph Milton as the contributor. While the only illegible signature on any of Jose Milton's checks is similar to the illegible signature on Joseph Milton's checks, publicly available information sources disclose that separate individuals named Jose Milton and Joseph Milton with different identifying information are associated with the same Miami, Florida address disclosed on all of the checks.

⁵ The Committee's refunds to individuals exceed the amount in violation due to adjusted calculations noted in footnote 4, supra. In addition, although audit workpapers include copies of the refund checks to individuals, the refunds were not itemized on the Committee's report covering the period during which they were apparently made and the Committee has not provided copies of the front and back of the negotiated refund checks.

Commission find reason to believe that the Lincoln Diaz-Balart for Congress Committee and Jose A. Riesco, as treasurer, violated 2 U.S.C. § 441a(f).

The Audit Division found that two individual contributors contributed excessive amounts to the Committee: Paul DiMare (\$2,000 excessive for the primary) and Jorge Monteagudo (\$1,500 excessive for the primary). Based on the Audit Referral, this Office recommends that the Commission find reason to believe that Paul DiMare and Jorge Monteagudo each violated 2 U.S.C. § 441a(a)(1)(A). However, given the small size of the excessive contributions from Mr. DiMare and Mr. Monteagudo, this Office recommends that the Commission take no further action against Paul DiMare and Jorge Monteagudo and close the file with respect to each. In notifying Messrs. DiMare and Monteagudo of the Commission's decision to find reason to believe but take no further action, this Office will include admonishment language regarding the limits under the law.

B. Prohibited Contributions

The Audit Division found that the Committee accepted 23 corporate contributions totaling \$10,630. Attachment 1 at 4. See 2 U.S.C. § 441b(a). Although the Committee apparently refunded the total amount, Attachment 1 at 4, the refunds were made outside of the 30-day period provided for by 11 C.F.R. § 103.3(b)(1).⁷ Therefore, based on the Audit Referral, this Office recommends that the Commission find reason to believe that Lincoln Diaz-Balart for Congress and Jose A. Riesco, as treasurer, violated 2 U.S.C. § 441b(a).

⁷ Although audit workpapers include copies of the refund checks to the corporations, the refunds were not itemized on the Committee's report covering the period during which they were apparently made and the Committee has not provided copies of the front and back of the negotiated refund checks.

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With respect to the following 23 corporations, this Office recommends that the Commission find reason to believe that each violated 2 U.S.C. § 441b(a): Anesthesia Group of Miami, Inc.; AquaMar 176, Inc.; B.C.C. Enterprises, Inc.; Calleja's Shutters, Inc.; Caribbean Americas Beauty Expo., Inc.; Coastal Insurance Group, Inc.; F&C Development Corp.; Florida National College, Inc.; Florida Property and Casualty Assoc., Inc.; Global Marketing Enterprises; Gomez Barker Associates, Inc.; Investors Realty Services, Inc.; Lakeside Developers, Inc.; Miguel Lopez, Jr., Inc.; Ocean Beach 167, Inc.; OPAC Enterprises, Inc.; Patient Transport Services, Inc.; R.B. Management Services, Inc.; Rose Flooring Corp.; The Continental Group, LTD; The Phyliss Apple Organization, Inc.; W/X of Dade County (WMX Technologies); and Water Brothers Corp. Of the 23 prohibited contributions, one was for \$2,000, one was for \$1,500, and three were for \$1,000. The remaining contributions range from \$30 to \$500. Given the relatively low amounts of the contributions, this Office recommends that the Commission take no further action and close the file with respect to each of these corporations. In notifying these corporations of the Commission's decision to find reason to believe but take no further action, this Office will include admonishment language regarding the Act's prohibition of corporate contributions.

C. Financial Misstatement

The Audit Division found that the Committee's January 1, 1997 beginning cash on hand was overstated by \$114,076. Attachment 1 at 5-7. The Audit Referral states that the source of a substantial part of this discrepancy remains unexplained, despite the formal discovery efforts this Office assisted with during the audit to elicit documentary and other explanatory material from the Committee, its representatives, and its banks. Attachment 1 at 6-8. Therefore, based on the

Audit Referral, this Office recommends that the Commission find reason to believe that Lincoln Diaz-Balart for Congress Committee and Jose A. Riesco, as treasurer, violated 2 U.S.C.

§ 434(b)(1).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

This Office recommends that the Commission enter into conciliation with Lincoln Diaz-Balart for Congress Committee and Jose A. Riesco, as treasurer, prior to a finding of probable cause to believe.⁸ Attached for the Commission's approval is a Conciliation Agreement

IV. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that Lincoln Diaz-Balart for Congress Committee and Jose A. Riesco, as treasurer, violated 2 U.S.C. §§ 434(b)(1), 441a(f), and 441b(a) and enter into conciliation prior to a finding of probable cause to believe with these respondents;
3. Find reason to believe that Paul DiMare and Jorge Monteagudo each violated 2 U.S.C. § 441a(a)(1)(A) and take no further action, send an admonishment letter, and close the file with respect to these respondents;
4. Find reason to believe that Anesthesia Group of Miami, Inc.; AquaMar 176, Inc.; B.C.C. Enterprises, Inc.; Calleja's Shuttles, Inc.; Caribbean Americas Beauty Expo., Inc.; Coastal

⁸ On November 20, 2000, counsel for the Committee met with representatives of this Office and the Audit Division to explain that the Committee's new treasurer and other new staff members are conducting a renewed effort to review the Committee's records, address any outstanding discrepancies, and file amended reports as needed. This Office will consider any relevant information submitted by the Committee during conciliation negotiations.

Insurance Group, Inc.; F&C Development Corp.; Florida National College, Inc.; Florida Property and Casualty Assoc., Inc.; Global Marketing Enterprises; Gomez Barker Associates, Inc.; Investors Realty Services, Inc.; Lakeside Developers, Inc.; Miguel Lopez, Jr., Inc.; Ocean Beach 167, Inc.; OPAC Enterprises, Inc.; Patient Transport Services, Inc.; R.B. Management Services, Inc.; Rose Flooring Corp.; The Continental Group, LTD; The Phyliss Apple Organization, Inc.; W/X of Dade County (WMX Technologies); and Water Brother Corp. each violated 2 U.S.C. § 441b(a) and take no further action, send an admonishment letter, and close the file with respect to these respondents;

5. Approve the attached Factual and Legal Analyses;
6. Approve the attached Conciliation Agreement; and
7. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

11/21/00
Date

Kim Leslie Bright
BY: Kim Leslie Bright
Associate General Counsel

Attachments:

1. Audit Referral Materials and Schedules of Excessive and Prohibited Contributions
2. Factual and Legal Analysis for Lincoln Diaz-Balart for Congress Committee
3. Factual and Legal Analysis for Paul DiMare
4. Factual and Legal Analysis for Jorge Monteagudo
5. Factual and Legal Analyses for Corporations (23)
6. Proposed Conciliation Agreement for Lincoln Diaz-Balart for Congress Committee

21-04-405-1034

Created by: A. Boniewicz

Date: 9/10/99

Lincoln Diaz-Balart For Congress Committee

Schedule Of Excessive Contributions From Individuals

Filename: tblImportCombinedContributionData - Schedule of Excessives.xls

Shared Drawer, W/P C5/2, Sheet 5

Auditor's Note: Available check copie Primary Date: 9/1/98

	Last Name	First Name	Date	Amount	Pri/Gen	Comment	Excess Amt	
1	1 Cerna	Luis R.	17-Jun-97	500.00	P	illegible per HM; cc not copied: SchB	C 5/5 (17)	
	2 CERNA	LUIS R A	11-Sep-98	1,000.00	G	Luis signs	C 5/5 (17)	
	3 CERNA	LUIS R A	30-Oct-98	500.00	G	Luis Signs	500.00 C 5/5 (17)	1
	4 CERNA B	LUIS R	22-Apr-98	500.00	P	Luis signs per HM; no cc copied; Sch B	C 5/5 (17)	
2	5 CUZA	FERMIN	22-Apr-98	2,000.00	P	Fermin signs - 2000	1,000.00 C 5/5 (9)	2
	6 CUZA	INES M	02-May-98	2,000.00	P	Inez signs - 2000	1,000.00 C 5/5 (10)	3
3	7 DE CARDENAS	MARLENE M	28-Jun-98	2,000.00	P	Marlene signs - 2000	1,000.00 C 5/5 (11)	4
	8 DE CARDENAS	JENNIE	28-Jun-98	2,000.00	P	illegible - 2000	1,000.00 C 5/5 (16)	5
	9 DECARDENAS	ANA I	28-Jun-98	2,000.00	P	illegible - 2000; could be antonio.	1,000.00 C 5/5 (16)	6
4	10 Diaz-Verson	Salvador Jr	16-Oct-98	1,500.00	G	Salavador signs - 1500	500.00 C 5/5 (3)	7
5	11 DiMare	Paul	01-Dec-97	1,000.00	P	Paul signs	C 3/6 (3)	
	12 DIMARE	Paul	26-Jun-98	1,000.00	P	Paul signs	1,000.00 C 5/5 (1)	8
	13 DIMARE	PAUL J	26-Jun-98	1,000.00	P	Paul signs	1,000.00 C 5/5 (2)	9
6	14 Estrada	Alfred	08-Nov-97	1,500.00	P	Alfred signs ck#2688	500.00 C 5/5 (15)	10
7	15 LEHTINEN	DEXTER	02-May-98	2,000.00	P	Dexter signs - 2000	1,000.00 C 3/6 (6)	11
8	16 Milton	JOSE/JOSEPH	12-Dec-97	1,000.00	P	Sch B no cc located/copied	C 5/5 (5)	
	17 MILTON	JOSE/JOSEPH	26-Jun-98	1,000.00	P	Chk#4927 illegible sign but links Joseph to Jose; also same address	1,000.00 C 5/5 (5)	12
	18 MILTON	JOSE/JOSEPH	26-Jun-98	1,000.00	P	Chk#18588 illegible sign but links Joseph to Jose w/ address	1,000.00 C 5/5 (4)	13
	19 MILTON	JOSE/JOSEPH	30-Oct-98	1,000.00	G	Check #5340 address links to Jose	C 5/5 (6)	
	20 MILTON	JOSE/JOSEPH	30-Oct-98	1,000.00	G	Check #4106 sign & address links to Jose to Joseph; Janette signs RSVP	C 5/5 (7) & (19)	14
	21 MILTON	JOSE/JOSEPH	30-Oct-98	1,000.00	G	Check #4105 sign & address links to Jose to Joseph; Ana signs RSVP	C 5/5 (8) & (19)	15
	22 MILTON	JOSE/JOSEPH	30-Oct-98	1,000.00	G	Check #5339 signature & address links to Jose	1,000.00 C 5/5 (6)	16
9	23 MILTON	CECIL	30-Oct-98	1,000.00	G	Cecil Milton account - 2000	C 5/5 (18)	
	24 MILTON	CECIL	30-Oct-98	1,000.00	G	Cecil Milton account - 2000	1,000.00 C 5/5 (18)	17
10	25 Monteagudo	Jorge	18-Nov-97	2,000.00	P	Jorge signs	1,000.00 C 3/6 (8)	18
	26 MONTEAGUDO	JORGE	31-Jul-98	500.00	P	Jorge signs per HM; no CC; Sch B	500.00 C 3/6 (8)	19
11	27 Noriega	Rosa	22-Nov-97	500.00	P	Rosa signs	C 3/6 (7)	
	28 Noriega	Rosa	22-Nov-97	1,000.00	P	Rosa signs	500.00 C 3/6 (7)	20
12	29 SCHWARTZ	ALAN M	27-Apr-98	2,000.00	P	Alan signs - 2000	1,000.00 C 5/5 (10)	21
13	30 SCOTT	PATRICK S	15-Oct-98	1,000.00	G	Patrick signs	C 5/5 (13)	
	31 SCOTT	PATRICK S	30-Oct-98	1,000.00	G	[chk not found]: Sch B	1,000.00 C 5/5 (13)	22
14	32 Tate	Stanley	27-Oct-97	1,000.00	P	[chk not found]: Sch B	C 5/5 (14)	
	33 TATE	STANLEY	12-Jun-98	1,000.00	P	Stanley signs- aggr 2k	1,000.00 C 5/5 (14)	23
15	34 WONG	JUAN	26-Jun-98	1,200.00	P	Chk #1200	200.00 C 3/6 (5)	24

Total Excessive Amount 20,700.00ATTACHMENT 1Page 9 of 10

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Lincoln Diaz-Balart For Congress Committee

Schedule Of Prohibited Contributions From Individuals

Filname: Contributions From Individuals - Schedule of Prohibited.xls
Sheet1

Corporate status verification from "www.sunbiz.org" Florida website

Auditor's Note: Copies of checks & Sec of State confirms at W/P C 5/6

#	Name	Address	City	State	Check Date	Check Amount	Prohibited Yes/No	Prohibited Amount	Comment
w/p C5/6	1 Microsukee Indian Gaming	500 SW 177 Ave	Miami	FL	17-Apr-98	2,000.00	No	0.00	No rec w/ Sec of State; See W/P C5/6(1)
w/p C5/6	2 Integra Financial Services LLC	601 Brickell Key Dr	Miami	FL	05-Dec-97	100.00	No	0.00	No rec w/ Sec of State; See W/P C5/6(2)
w/p C5/6	3 Caribbean Americas Beauty Expo., Inc	4119 NW 135th St	Miami	FL	05-Dec-97	100.00	Yes	100.00	Sec of State Term 10/16/98; See W/P C5/6(2)
w/p C5/6	4 Gomez Barker Associates, Inc	2350 Coral Way	Miami	FL	04-Dec-97	1,000.00	Yes	1,000.00	Inc per Sec of State; See W/P C5/6(3)
w/p C5/6	5 AquaMar 176, Inc.	3211 Ponce De Leon Blvd	Coral Gables	FL	26-Nov-97	500.00	Yes	500.00	Inc per Sec of State; See W/P C5/6(4) J. Milton contribution see excessive review
w/p C5/6	6 Ocean Beach 167, Inc	4206 West 12th Ave	Hialeah	FL	05-Dec-97	1,000.00	Yes	1,000.00	Inc per Sec of State; See W/P C5/6(4) J. Milton contribution see excessive review
w/p C5/6	7 Florida National College, Inc	2665 S Bayshore Dr	Coconut Grove	FL	06-Dec-97	200.00	Yes	200.00	Inc per Sec of State; See W/P C5/6(5)
w/p C5/6	8 Investors Realty Services, Inc	PO Box 145060	Coral Gables	FL	04-Dec-97	150.00	Yes	150.00	Inc per Sec of State; See W/P C5/6(6)
w/p C5/6	9 Anesthesia Group of Miami, Inc	150 Westward Dr	Miami Springs	FL	24-Nov-97	150.00	Yes	150.00	Inc per Sec of State; See W/P C5/6(6)
w/p C5/6	10 Coastal Insurance Group, Inc	1260 NW 72nd Ave	Miami	FL	17-Nov-97	500.00	Yes	500.00	Inc per Sec of State; See W/P C5/6(7)
w/p C5/6	11 B.C.C. Enterprises, Inc	7676 W 34th Lane	Hialeah	FL	17-Nov-97	500.00	Yes	500.00	Inc per Sec of State; See W/P C5/6(8)
w/p C5/6	12 OPAC Enterprises, Inc	PO Box 162339	Miami	FL	01-Dec-97	1,000.00	Yes	1,000.00	Inc per Sec of State; See W/P C5/6(9)
w/p C5/6	13 Global Marketing Enterprises	2303 NW 70 Ave	Miami	FL	11-Jul-97	400.00	Yes	400.00	Foreign (Texas) Withdrawal 3/25/99; See W/P C 5/6 (10)
w/p C5/6	14 W/O of Dade County (WMX Technologies)	2210 W 74th St	Hialeah	FL	13-Nov-97	200.00	Yes	200.00	Inc per Sec of State; See W/P C5/6(11)
w/p C5/6	16 F&C Development Corp	1040 E 41st St	Hialeah	FL	26-Nov-97	250.00	Yes	250.00	Inc per Sec of State; See W/P C5/6(11)
w/p C5/6	17 R. B. Management Services, Inc	9754 SW 148th Ct	Miami	FL	27-Jun-98	30.00	Yes	30.00	Inc per Sec of State; See W/P C5/6(12)
w/p C5/6	18 Water Brother Corp	3400 Coral Way	Miami	FL	27-Oct-98	100.00	Yes	100.00	Inc per Sec of State; See W/P C5/6(13)
w/p C5/6	19 Rose Flooring Corp	7000 SW 22nd Ct	Davie	FL	23-Oct-98	100.00	Yes	100.00	Inc per Sec of State; See W/P C5/6(14)
w/p C5/6	20 Lakeside Developers, Inc	600 Palm Ave	Hialeah	FL	26-Oct-98	300.00	Yes	300.00	Inc per Sec of State; See W/P C5/6(15)
w/p C5/6	21 Florida Property And Casualty Assoc, Inc	2500 NW 78th Ave	Miami	FL	19-Oct-98	2,000.00	Yes	2,000.00	Inc per Sec of State; See W/P C5/6(16)
w/p C5/6	22 The Phyllis Apple Organization, Inc	17840 W Dixie Hwy	N Miami Beach	FL	28-Oct-98	50.00	Yes	50.00	Inc per Sec of State; See W/P C5/6(17)
w/p C5/6	23 Miguel Lopez Jr, Inc	7711 NW 74 Ave	Medley	FL	28-Oct-98	100.00	Yes	100.00	Inc per Sec of State; See W/P C5/6(18)
w/p C5/6	24 Office Express Supply Inc	10701 NW 89 Ave	Hialeah Gardens	FL	28-Oct-98	150.00	No	0.00	Rejected filing 5/13/99; See W/P C5/6(18)
w/p C5/6	25 The Continental Group, LTD	2950 N 28th Terrace	Hollywood	FL	28-Oct-98	300.00	Yes	300.00	Inc per Sec of State; See W/P C5/6(19)
w/p C5/6	26 Patient Transport Services, Inc	55 Ocean Lane Dr	Key Biscayne	FL	18-Sep-98	200.00	Yes	200.00	Inc per Sec of State; See W/P C5/6(20)
							Yes = 23 10,630.00		

ATTACHMENT



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel **KCS**

DATE: November 21, 2000

SUBJECT: Audit Referral 00-07-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE ☒
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒
24 Hour TALLY VOTE ☐
24 Hour NO OBJECTION ☐
INFORMATION ☐

DISTRIBUTION

COMPLIANCE ☒
Open/Closed Letters ☐
MUR ☐
DSP ☐
STATUS SHEETS ☐
Enforcement ☐
Litigation ☐
PFESP ☐
RATING SHEETS ☐
AUDIT MATTERS ☐
LITIGATION ☐
ADVISORY OPINIONS ☐
REGULATIONS ☐
OTHER ☐

21-04-405-1037